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Attorneys for Defendant,
DOLLAR TREE STORES, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TAMMY WHITEHURST,
Plaintiff,
v.
DOLLAR TREE STORES, INC.,
DOES 1 to 100,
Defendants.

Case No.:
[Shasta County Superior Court Case No.:
SCRDCVPO21-0197700-000]

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §1332 & §1441(B)
(DIVERSITY)**

Complaint Filed: July 2, 2021

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1332 and §1441(b), Defendant DOLLAR TREE STORES, INC., contemporaneously with the filing of this notice, is effecting the removal of the below referenced action from the Superior Court of the State of California for the County of Shasta, to the United States District Court, Eastern District of California. The removal is based, specifically, on the following grounds.

JURISDICTION AND VENUE ARE PROPER

1. This is a civil action over which this Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a), and is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441(b) because it is a civil action between citizens of different states and the amount in controversy exceeds

\$75,000, exclusive of interest and costs, as set forth below. 28 U.S.C. §§ 1332, 1441(a), and 1146(b).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(b), 1391 and
1446.

PLEADINGS, PROCESS AND ORDERS

3. On July 2, 2021, Plaintiff TAMMY WHITEHURST (“Plaintiff”) commenced the above-entitled civil action in the Superior Court for the County of Shasta by filing a Complaint therein entitled *Tammy Whitehurst v. Dollar Tree Stores, Inc. and Does 1 to 100*; Case No. SCRDCVPO21-0197700-000. True and correct copies of the following documents which were served on Defendant DOLLAR TREE STORES, INC., are attached hereto and incorporated herein by reference collectively as **Exhibit “A”**.

- a. Summons;
- b. Complaint;
- c. Notice of 1) All Purpose Assignment, 2) Mandatory Settlement Conference; and 3) Trial;
- d. Civil Case Cover Sheet; and
- e. ADR Information Package

4. On August 30, 2021, the Summons, Complaint, Notice of 1) All Purpose Assignment, 2) Mandatory Settlement Conference; and 3) Trial; Civil Case Cover Sheet, and ADR Information Package (**Exhibit “A”**) were personally served on DOLLAR TREE STORES, INC.’s agent for service of process.

5. On September 13, 2021, DOLLAR TREE STORES, INC., filed its Answer to Complaint and Demand for Jury Trial. A true and correct copy of DOLLAR TREE STORES, INC's Answer to Complaint and Demand for Jury Trial are collectively attached and incorporated by reference as **Exhibit “B.”**

6. The attached exhibit constitutes all process, pleadings and orders served by and upon Defendant DOLLAR TREE STORES, INC. in this matter.

DIVERSITY

A. Citizenship

7. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil action wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. This action is one that may be removed to this Court by Defendant pursuant to 28 U.S.C. section 1441(b), as the action is between citizens of different states.

8. Plaintiff was, at the time of the filing of this action, and presently remains, a resident and citizen of the State of California.

9. Defendant DOLLAR TREE STORES, INC., is a corporation. For diversity purposes, a corporation is deemed to be a citizen of every state by which it has been incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Defendant is incorporated in the State of Virginia, with its principal place of business in Virginia. Accordingly, Defendant is a citizen of the state of Virginia.

10. Therefore, complete diversity of citizenship exists as between Plaintiff TAMMY WHITEHURST and Defendant DOLLAR TREE STORES, INC.

C. Fictitious Does

11. Defendants DOES 1 to 100, inclusive, are wholly fictitious. The Complaint does not set forth the identity or status of any said fictitious defendants. In determining whether a civil action is removable on the basis of jurisdiction under section 1332(a), the citizenship of defendants sued under fictitious names shall be disregarded. 28 U.S.C §. 1441(b)(1); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998). Accordingly, the mere fact that the Complaint makes reference to fictitious defendants does not destroy diversity jurisdiction and does not preclude this action from being properly removed to this Court.

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AMOUNT IN CONTROVERSY

12. Plaintiff's Complaint sets forth a cause of action for negligence. *See,*
Exhibit "A." Plaintiff alleges that on July 25, 2019, she was a patron at defendant's
 store, when she slipped and fell due to a plastic placemat on the floor, causing her to
 be injured. Although Plaintiff was prohibited from stating a specific amount demanded
 in her Complaint, Defendant has been able to ascertain through the Complaint and
 "other paper" that the amount in controversy exceeds \$75,000.00.¹

13. Where a complaint does not allege a specific amount in damages, the
 removing defendant bears the burden of proving by a "preponderance of the evidence"
 facts that support an inference that the amount in controversy exceeds the statutory
 minimum. *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1996);
see, McPhail v. Deere and Company, 529 F.3d 947, 955 (10th Cir. 2008) ("It is only
 the jurisdictional facts that must be proven by a preponderance – not the legal
 conclusion that the statutory threshold amount is in controversy."). This standard is
 not a "daunting" one, as courts recognize that unlike the "legal certainty test"
 applicable where the complaint does allege a specific amount in damages, the
 removing defendant is not obligated to "research, state, and prove the plaintiff's claim
 for damages." *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994); *see also,*
Korn v. Polo Ralph Lauren Corp., 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008).

14. A defendant must merely set forth the underlying facts supporting an
 inference that the amount in controversy exceeds the statutory minimum. A defendant
 must establish jurisdiction by proving jurisdictional facts, i.e., proof of what the
 plaintiff is seeking to recover. *McPhail*, 529 F.3d at 954-55. "Once the facts have
 been established, uncertainty about whether the plaintiff can prove [h]is substantive
 claim, and whether damages (if the plaintiff prevails on the merits) will exceed the
 threshold, does not justify dismissal." *Meridian Secs. Ins. Co. v. Sadowski*, 441 F.3d

¹ California Law prohibits personal injury plaintiffs from stating a specific amount of
 damages sought in the complaint. *See, Cal. Code Civ. Proc. § 425.10.*

1 540, 543 (7th Cir. 2006); *see also, McPhail*, 529 F.3d at 954 (once underlying
 2 jurisdictional facts are proven, “a defendant (like a plaintiff) is entitled to stay in
 3 federal court unless it is ‘legally certain’ that less than \$75,000 is at stake”).

4 15. On September 28, 2021, Plaintiff served Defendant with a Statement of
 5 Damages under California *Code of Civil Procedure* § 452.11. The Statement of
 6 Damages establishes that the amount in controversy in this litigation exceeds the
 7 \$75,000 statutory minimum. A true and correct copy of Plaintiff’s Statement of
 8 Damages is attached hereto as **Exhibit “C.”**

9 16. Plaintiff’s Statement of Damages alleges that she is seeking at least
 10 \$39,000.00 in loss of earnings, and general damages of \$500,000.00, among other
 11 damages claimed. *Ibid.* Thus, the amount in controversy exceeds the \$75,000 statutory
 12 minimum and federal jurisdiction is proper.

13 17. 28 USC § 1446(b)(3) provides that, where the case stated by the initial
 14 pleading is not removable, a notice of removal can be filed within thirty (30) days after
 15 receipt by the defendant, through service or otherwise, of an amended pleading,
 16 motion, order “or other paper” from which it may first be ascertained that the case is
 17 one which is or has become removable. A statement of damages under California Code
 18 of Civil Procedure section 425.11, is a written statement setting forth the nature and
 19 amount of damages being sought, and constitutes “other paper” under section
 20 1446(b)(3). *See, Hanson v. Equilon Enterprises LLC* (N.D.Cal. 2014) 2014 U.S. Dist.
 21 LEXIS 110795, *9 (finding statement of damages served on defendant by plaintiff
 22 constituted “other paper”).

23 18. The test for whether the amount in controversy is satisfied is whether
 24 there is a “reasonable probability” that the claim exceeds \$75,000. *Scherer v. The*
25 Equitable Life Assurance Society of the U.S., 347 F.3d 394, 397 (2d. Cir. 2003). The
 26 Ninth Circuit has adopted the “either-viewpoint rule,” meaning that the amount in
 27 controversy requirement is satisfied if (1) Plaintiff seeks to recover more than
 28 \$75,000.00 or (2) the recovery Plaintiff seeks will cost the defendant more than the

1 jurisdictional threshold. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 405 (9th
2 Cir. 1996).

3 Plaintiff's Statement of Damages constitutes "other paper" and satisfies
4 the amount in controversy requirement. Therefore, federal jurisdiction is proper.

5 **TIMELINESS OF REMOVAL**

6 20. This Notice of Removal is timely filed in that it has been filed within
7 thirty (30) days after receipt by Defendant of Plaintiff's Statement of Damages on
8 September 28, 2021, which first indicated that the amount in controversy exceeds
9 \$75,000 and the matter is removable. 28 U.S.C. § 1446(b)(3).

10 21. Further, the instant removal is made within one year of the filing of the
11 Complaint. As noted above, Plaintiff filed her Complaint on July 2, 2021.

12 23. For the foregoing reasons, this Court has original jurisdiction under 28
13 U.S.C. §§ 1332 and 1441(b).

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15 Dated: October 26, 2021

THARPE & HOWELL, LLP

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18 By: _____
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20 CHARLES D. MAY
21 ANDREA BREUER
22 Attorneys for Defendant,
23 DOLLAR TREE STORES, INC.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
2. My business address is 15250 Ventura Boulevard, Ninth Floor, Sherman Oaks, CA 91403.
3. I served copies of the following documents (specify the exact title of each document served):

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1332 & §1441(B)
(DIVERSITY)**

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Diane L. Balma, Esq.
LASKIN BALMA
ATTORNEYS AT LAW
1810 S. Street
Sacramento, CA 95811
Tel: 916-329-9010
Fax: 916-442-0444
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cc
Aimee Blackard
abblackard@laskinlaw.com
Amber Wheat
awheat@laskinlaw.com

Attorneys for Plaintiff, TAMMY
WHITEHURST

5. a. **X** **ONLY BY ELECTRONIC TRANSMISSION.** Only by e-mailing the document(s) to the persons at the e-mail address(es) listed during the Coronavirus (Covid-19) pandemic and pursuant to Fed.R.Civ.P.Rule 5, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mails. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

6. I served the documents by the means described in item 5 on *(date)*: *See below*
I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

10/26/2021 Belinda A. Porras
DATE (TYPE OR PRINT NAME)
I:\32000-000\32248\Pleadings\FEDERAL\Notice of Removal.docx

Belinda A. Porras
(SIGNATURE OF DECLARANT)